

# CITY OF ROCHESTER

## REQUEST FOR QUALIFICATIONS

### 2<sup>ND</sup> Street SE Reconstruction DESIGN-BUILD PROJECT



August 19, 2011

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## **1.0 INTRODUCTION**

The City of Rochester (the “City”), a political subdivision of the State of Minnesota through the Minnesota Department of Transportation (“MnDOT”) is requesting Statements of Qualifications (“SOQs”) from design-build firms (“Submitters”) interested in submitting proposals for the 2<sup>nd</sup> Street SE Reconstruction Design-Build Project (the “Project”). For the purposes of this RFQ, the term “design-build firm” means a proprietorship, partnership, limited liability partnership, joint venture, corporation, any type of limited liability company, professional corporation, or any legal entity.

The Project will be funded with State and City dollars, thereby requiring that the Submitters adhere to all pertinent City and State requirements.

The City will conduct a Best Value Procurement Training Session for all potential Submitters at the following time and location:

Date: September 22, 2011

Time: 10:00 am to 12:00 pm

Location: Mayo Civic Center  
Legion Suite  
Rochester, MN 55904

Public parking is also available in the Civic Center Parking Ramp adjacent to the Mayo Civic Center.

Submitters must have at least one representative at the informational meeting and identify a contact person for the procurement process. Meeting attendees will be required to sign in at the meeting. Submitters who do not have a representative at the informational meeting will not be allowed to submit a SOQ.

### **1.1 Procurement Process**

The City will use a two-phase procurement process to select a design-build contractor to deliver the Project. This Request for Qualifications (this “RFQ”) is issued as part of the first phase to solicit information, in the form of SOQs, that the City will evaluate to determine which Submitters are the most highly qualified to successfully deliver the Project. The City anticipates short-listing at least two, but not more than five, of the most highly qualified Submitters that submit SOQs. In the second phase, the City will

issue a Request for Proposals (the “RFP”) for the Project to the short-listed Submitters. Only the short-listed Submitters will be eligible to submit proposals for the Project. Each short-listed Submitter that submits a proposal in response to the RFP, if any, is referred to herein as a “Proposer.” The City will award a design-build contract for the Project, if any, to the responsive and responsible Proposer offering the best value, to be determined as described in the RFP.

## **1.2 Project Goals**

The Purpose of this Project is to: provide new pavement and pedestrian sidewalks; incorporate aesthetic enhancements into the project; improve bike and pedestrian safety and mobility; increase longevity of the pavement structure; maintain through traffic and access to public and private property during the project, and complete the project on time and within budget.

## **2.0 BACKGROUND INFORMATION: RFQ PROCESS**

### **2.1 Scope of Work**

The Project scope is to design and reconstruct the two downtown city blocks of 2<sup>nd</sup> Street SE from Broadway (TH 63) to Civic Center Drive while maintaining through traffic and access to public and private property during the project.

The Project includes complete reconstruction of all roadway pavements and sidewalks. The road and sidewalks are to be reconstructed utilizing concrete. The project includes identified repair of deteriorated storm sewer, grading, surfacing, signals, street lighting, signing, and landscaping. Additional major responsibilities to the successful team will include, but are not limited to, environmental coordination and permitting, public relations, public and private utility coordination.

### **2.2 Estimated Cost and Maximum Time Allowed**

The estimated cost of the Project is \$ 3,000,000. All aspects of the Project are to be completed and open to traffic no later than October 15, 2012.

### **2.3 Project Schedule**

The City also anticipates the following additional Project milestone dates. The schedule is subject to revisions by the RFP and addenda to this RFQ.

Issue RFQ	August 18, 2011
RFQ Educational Meeting	September 22, 2011
Deadline for submitting RFQ questions	September 29, 2011, 2:00pm MN time
SOQs Due	October 11, 2011, 2:00pm MN time
Evaluation of SOQs	October 12, 2011 – October 14, 2011
Notify short-listed Submitters	October 17, 2011
Issue RFP	October 18, 2011
RFP Educational Meeting	November 3, 2011
Technical and Price Proposals Due	January 11, 2012
Interviews	January 18, 2012
Price Proposals Opened	January 19, 2012
Notify potential Best Value Vendor	January 26, 2012
Pre-Award Kickoff Meeting	February 6, 2012
Pre-Award Phase	February 7 – March 1, 2012
Pre-Award Summary Meeting	March 2, 2012
Notice to Proceed (NTP)	March 6, 2012
Project Design	March - June 2012
Construction Start Date	July 5, 2012

## 2.4 City Project Management; Ex Parte Communications

The City's Project Manager for the Project is:

Doug Nelson, PE  
Rochester Public Works Department  
201 4<sup>th</sup> Street SE Room 108  
Rochester, MN  
[dnelson@rochestermn.gov](mailto:dnelson@rochestermn.gov)

The City's Procurement Manager for the Project is:

Tonya Klees  
Rochester Public Works Department  
201 4<sup>th</sup> Street SE Room 108  
Rochester, MN 55904  
[tklees@rochestermn.gov](mailto:tklees@rochestermn.gov)

The City's Project Procurement Manager is the City's sole contact person and addressee for receiving all communications about the Project procurement process. Except as

permitted by Section 7.1 and below, all inquiries and comments regarding the Project and the procurement thereof must be made by e-mail or letter to the City's Procurement Manager.

During the Project procurement process, commencing with issuance of this RFQ and continuing until award of a contract for the Project (or cancellation of the procurement), no employee, member or agent of any Submitter shall have any ex parte communications regarding this procurement with any member of the City, their advisors (e.g., cities, counties) or any of their contractors or consultants involved with the procurement, except for communications expressly permitted by this RFQ (or subsequent to issuance of the RFP, except for communications expressly permitted by the RFP).

Any Submitter engaging in such prohibited communications may be disqualified at the sole discretion of the City.

## **2.5 Questions and Clarifications; Addenda**

Questions and requests for clarification regarding this RFQ must be submitted in writing to the City's Project Procurement Manager as described in Section 2.4. To be considered, all questions and requests must be received by the date and time indicated in Section 2.3.

The City reserves the right to revise this RFQ at any time before the SOQ due date including, but not limited to, modifying the SOQ or any other due date stated above. Such revisions, if any, will be announced by addenda to this RFQ.

The City will use the following guidelines when responding to questions and requests for clarification and issuing addenda:

- The City will answer questions and requests for clarification questions and post the answers on the City's website
- The City will send an e-mail notification to the contact person for each Submitter as soon as each addendum or clarification is issued. The notification will include an electronic copy of the addendum or clarification when possible.

## **2.6 Major Participant**

As used herein, the term "Major Participant" means any of the following entities: all general partners or joint venture members of the Submitter; all individuals, persons, proprietorships, partnerships, limited liability partnerships, corporations, professional

corporations, limited liability companies, business associations, or other legal entity however organized, holding (directly or indirectly) a 15 percent or greater interest in the Submitter; any subcontractor(s) that will perform work valued at 10 percent or more of the overall construction contract amount; the lead engineering/design firm(s); and each engineering/design sub-consultant that will perform 20 percent or more of the design work.

## **2.7 City Consultant/Technical Support**

The City of Rochester has the option to hire a consultant/technical support to assist in the delivering of this project.

## **2.8 Organizational Conflicts of Interest**

The Submitter's attention is directed to Exhibit A, which contains the organizational conflict of interest provisions applicable to the procurement process and the Project.

The Submitter is prohibited from receiving any advice or discussing any aspect relating to the Project or the procurement of the Project with any person or entity with an organizational conflict of interest, including, but not limited to, the City Consultant/Technical Support firms listed in Section 2.7. Such persons and entities are prohibited from participating in any Submitter organization relating to the Project.

The Submitter agrees that, if after award, an organizational conflict of interest is discovered, the Submitter must make an immediate and full written disclosure to the City that includes a description of the action that the Submitter has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, the City may, at its discretion, cancel the design-build contract for the Project. If the Submitter was aware of an organizational conflict of interest prior to the award of the contract and did not disclose the conflict to the City, the City may terminate the contract for default.

The City may disqualify a Submitter if any of its Major Participants belong to more than one Submitter organization.

## **2.9 Changes to Organizational Structure**

Individuals and design-build firms (including Key Personnel or Major Participants) identified in the SOQ may not be removed, replaced, or added to without the written approval of the City Engineer, or designee. The City Engineer, or designee, may revoke an awarded contract if any Key Personnel or Major Participant identified in the SOQ is



removed, replaced, or added to without the City Engineer's, or designee's, written approval. To qualify for the City Engineer's, or designee's, approval, the written request must document that the proposed removal, replacement, or addition will be equal to or better than the Key Personnel or Major Participant provided in the SOQ. The City Engineer, or designee, will use the criteria specified in this RFQ to evaluate all requests. Requests for removals, replacements, and additions must be submitted in writing to the City's Project Manager as described in Section 2.

#### **2.10 Past Performance or Experience**

Past performance or experience or other criteria used in the RFQ evaluation process does not include the exercise or assertion of a person's legal rights.

#### **2.11 Equal Employment Opportunity**

The Submitter will be required to follow both State of Minnesota and Federal Equal Employment Opportunity (EEO) policies.

In accordance with the Minnesota Human Rights Act, Minnesota Statute 363A.08 Unfair Discriminatory Practices, the City will affirmatively assure that on any project constructed pursuant to this advertisement, equal employment opportunity will be offered to all persons without regard to race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in a local commission, disability, sexual orientation, or age.

In accordance with Minnesota Human Rights Act, Minnesota Statute 363A.36 Certificates of Compliance for Public Contracts and 363A.37 Rules for Certificates of Compliance, the City will assure that appropriate parties to any contract entered into pursuant to this advertisement possess valid Certificates of Compliance. Any Submitter that is not a current holder of a compliance certificate issued by the Minnesota Department of Human Rights must contact the Department of Human Rights immediately for assistance in obtaining a certificate.

#### **2.12 Disadvantaged Business Enterprises**

Disadvantaged Business Enterprises (DBEs) participation is not required on this Project, but the Submitters are encouraged to include DBE participation in the design and construction of the Project.

### **3.0 CONTENT OF STATEMENT OF QUALIFICATIONS**

This section describes specific information that must be included in the SOQ. SOQs must

follow the outline of this section. The proposers SOQ will become part of the proposer's final contract if they are the awarded submitter.

Documents submitted pursuant to this RFQ will be subject to the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13.

Some of the information requested in this RFQ is for informational purposes only, while other information will be used in the qualitative analysis of the SOQs. The City will initially review SOQs on a pass/fail basis. The purpose of this initial review is for the City to determine whether the SOQ, on its face, is responsive to this RFQ. An SOQ will be, on its face, responsive to this RFQ if it appears to include all of the components of information required by this RFQ in the manner required by this RFQ. This initial pass/fail review does not include any qualitative assessment as to the substance of the information submitted. Those SOQs that pass the pass/fail review will then be reviewed on a qualitative basis according to the criteria specified in [Section 4.3](#).

The City reserves the right to contact any Submitter to clarify any information in its SOQ. The City also reserves the right to request additional information not described in this RFQ (such as detailed information about the financial strength/health of a company). Submitters that do not, or cannot provide the requested information, may be considered nonresponsive.

The following sections describe the information required and how it will be used. Submitters must prepare proposals that follow the format and sequence specified in this RFQ. This includes adherence to the format of any attachments and exhibits. The Submitter must complete and provide all information required by any of the listed Attachments and Exhibits in order to be considered responsive.

### **3.1 FORMATTING REQUIREMENTS**

The following formatting requirements apply to the following Attachments. Any additional formatting requirements will be identified within each Attachment's description.

- Attachment C - Risk Plan
- Attachment D - Project and Technical Capability Plan
- Attachment E – Resource Availability Documentation

In order to minimize any bias, the attachments identified above must NOT contain any names that can be used to identify who the Submitter is (such as company names, personnel names, project names, product names, etc.). A template for each Attachment is provided in this document and must be used by all Submitters. Submitters are NOT

allowed to re-create, re-format, or modify the template (cannot alter font size, font type, font color; add colors, pictures, diagrams, etc.). An electronic copy of this document is available for download and must be used. Each individual attachment must NOT exceed the page limits identified below (completed only on front side of each page)

- Attachment C → two (2) pages maximum
- Attachment D → two (2) pages maximum
- Attachment E → one (1) page maximum

### **3.2 SOQ COVER PAGE AND CHECKLIST (Attachment A)**

The Submitter must complete and submit the SOQ cover page and checklist (Attachment A). This attachment shall be the cover page for the Submitter's SOQ. Submitters must not modify the format of this attachment.

### **3.3 SOQ FORM (Attachment B)**

The Submitter will prepare and submit an SOQ Form (Attachment B). The SOQ Form requires the following information:

- Identification of the firms submitting the SOQ and key individuals. These individuals shall be used by the Submitter for the duration of this contract. These individuals cannot be replaced, unless it is in the best interest of the City, as determined by the City (in its sole discretion);
- Acknowledgement and incorporation of all amendments in your proposal.

### **3.4 RISK PLAN (Attachment C)**

The Submitter must submit **Attachment C**. The Submitter should list and prioritize major risk items on this project that the submitter does not control. The risks should be described in simple terms so that non-technical personnel can understand the risk. The Submitter must also explain how they will mitigate, manage, and/or minimize the risk from occurring. A mitigation/management plan with supporting documented performance is required for a dominant, or high rating, from the selection committee. This includes where the mitigation plan was used previously, and the impact on performance in terms of customer satisfaction and the number of times it was used. Identifying best value practices which mitigated risk that the Submitter did not control with accompanying performance metrics will result in a higher rating.

*Evaluation*

The Evaluation Committee will consider each Submitter's ability to identify their plan to minimize and manage the risks they do not control. The committee will consider the following attributes when evaluating:

- The Submitter's ability to identify risks that they do not control and present concise plans to mitigate and minimize the risks.
- Evidence that the Submitter has implemented the mitigation plan before (verifiable performance metrics, references, numeric scores, project scopes, deviation rates, customer satisfaction scores).
- Evidence that the Submitter has been successful in mitigating time and cost deviation of their past projects.
- Evidence that the previous clients have been very satisfied with Submitter's results.
- Evidence that the projects were similar to the current project being advertised.

The evaluators will not be provided with names or any other information prior to evaluating the Plan (to minimize any personal bias). To receive a high rating, the Submitter must support/document their capability to mitigate, manage, and minimize the risk with either verifiable performance metrics or best value practices with performance measurements.

### **3.5 PROJECT AND TECHNICAL CAPABILITY PLAN (Attachment D)**

The Submitter must submit **Attachment D**. The primary purpose of the Project and Technical Capability Plan is to allow the Submitter to differentiate their capability to meet the technical requirements of this project with a plan that meets time and cost goals, and to identify their "vision" or "plan" for the alignment of expertise over the duration of the project. The submitter should identify how the critical personnel will ensure project performance.

The Submitter must address their experience in design and construction of urban street and underground utility projects.

#### *Evaluation*

The Evaluation Committee will consider each Submitter's experience as evidenced by documented performance metrics. Proposals that support statements of performance with experience in design and construction of urban street and underground utility projects (verifiable performance metrics, references, numeric scores, project scopes, deviation rates, customer satisfaction scores) will receive a higher performance score. The

evaluators will not be provided with names or any other information prior to evaluating the Plan (to minimize any personal bias). To receive a high rating, the Submitter must use either verifiable performance metrics or best value practices with performance measurements.

### **3.6 RESOURCE AVAILABILITY DOCUMENTATION (Attachment E)**

The Submitter must submit **Attachment E**. The primary purpose of the Resource Availability Documentation is to allow the Submitter to identify their financial, personnel, and equipment resources available for the project. Information required by this section will be evaluated on a pass/fail basis.

### **3.7 PAST PERFORMANCE INFORMATION (Exhibit 1)**

Past Performance Information (PPI) will be analyzed on all critical team components. Please review Exhibit 1 for instructions on collecting PPI. The critical team components that will be analyzed in this project include:

- Contractor / Design-Builder (firm)
- Engineering Company (firm)
- Project Manager (individual)
- Project Engineer (individual)
- Project Superintendent (individual)
- Project Lead Design Engineer (individual)

### **3.8 LEGAL AND FINANCIAL**

The information required in response to Sections 3.8.1, 3.8.3, 3.8.4, and 3.8.5 shall be submitted as Appendix B – Legal and Financial. Information required by this section will be evaluated on a pass/fail basis.

#### **3.8.1 Acknowledgment of Clarifications and Addenda**

Identify all clarifications and addenda received by number and date.

#### **3.8.2 Organizational Conflicts of Interest**

Identify all relevant facts relating to past, present, or planned interest(s) of the Submitter's team (including the Submitter, Major Participants, proposed consultants, contractors, and subcontractors, and their respective chief executives, directors, and key project personnel) which may result, or could be viewed as, an organizational conflict of interest in connection with this RFQ. See Section 2.8.

Disclose: (a) any current contractual relationships with the City (by identifying the City contract number and project manager); (b) present or planned contractual or employment relationships with any current City employee; (c) any other circumstances that might be considered to create a financial interest in the contract for the Project by any current City employee if the Submitter is awarded the contract; and d) any ex parte communication as defined in Section 2.4 which occurred after this RFQ was issued. The Submitter must also disclose any current contractual relationships where the Submitter is a joint venture or partner with the firms listed in Section 2.7 and other key stakeholders (cities, counties, Mn/DOT). The foregoing is provided by way of example, and shall not constitute a limitation on the disclosure obligations.

For any fact, relationship, or circumstance disclosed in response to this Section 3.8.2, identify steps that have been or will be taken to avoid, neutralize, or mitigate any organizational conflicts of interest.

In cases where Major Participants on different Submitter organizations belong to the same parent company, each Submitter must describe how the participants would avoid conflicts of interest through the qualification and proposal phases of the Project.

The required information for Organizational Conflicts of Interest shall be submitted as Appendix C – Organizational Conflicts of Interest.

### **3.8.3 Legal Structure**

If the Submitter organization has already been formed, provide complete copies of the organizational documents that allow, or would allow by the time of contract award, the Submitter and Major Participants to conduct business in the State of Minnesota. If the Submitter organization has not yet been formed, provide a brief description of the proposed legal structure or draft copies of the underlying agreements.

### **3.8.4 Bonding Capability**

Provide a letter from a surety or insurance company stating that the Submitter is capable of obtaining a performance bond and payment bond covering the Project in the amount of \$3 million. The letter shall also state that the Submitter is capable of obtaining a warranty bond covering the Project warranty period for the amount of \$3 million. Letters indicating “unlimited” bonding capability are not acceptable. The surety or insurance company providing such letter must be authorized to do business in the State of Minnesota with an A.M. Best Co. "Best's Rating" of A- or better and Class VIII or better.

### **3.8.5 Submitter Information**

For the Submitter (if the Submitter is not yet existing or newly formed, please explain), each Major Participant, and any affiliate of the Submitter or a Major Participant (including the firm's parent company, subsidiary companies, and any other subsidiary or affiliate of the firm's parent company) whose experience is cited as the basis for the firm's qualifications:

- a. Describe any project that resulted in assessment of liquidated damages, stipulated damages, or monetary deductions for not meeting intermediate and completion deadlines against the firm within the last five years. Describe the causes of the delays and the amounts assessed. Describe any outstanding damage claims for projects in which any firm was involved within the last five years.
- b. Describe the conditions surrounding any contract (or portion thereof) entered into by the firm that has been terminated for cause, or which required completion by another party, within the last five years. Describe the reasons for termination and the amounts involved.
- c. Describe any debarment or suspension from performing work for the federal government, any state or local government, or any foreign governmental entity, against the firm.

For each description, identify the project owner's representative and current phone number. Indicate "None" to any subsection above that does not apply.

## **4.0 EVALUATION PROCESS**

### **4.1 SOQ Evaluation**

The City will initially review the SOQs for responsiveness to the requirements of this RFQ. The information in the SOQ will then be measured against the evaluation criteria stated in Section 4.3.

### **4.2 Interview**

The City reserves the right to conduct interviews with all potential Submitters prior to development of a short list. The City may conduct these interviews during its evaluation of the overall SOQ submittal process and scoring. If elected by the City, the City will determine the schedule for interviews following receipt of the SOQs.

### 4.3 SOQ Evaluation and Scoring

The City will evaluate all responsive SOQs and measure each Submitter's response against the Project goals and selection criteria set forth in this RFQ, resulting in a numerical score for each SOQ. The City will use the following criteria and weightings:

Weight	Criteria	Reference
50 Points	Risk Plan Rating	Refer to Section 3.4
50 Points	Project and Technical Capability Plan Rating	Refer to Section 3.5
20 Points	Past Performance Information	Refer to Section 3.7
Pass/Fail	Resource Availability	Refer to Section 3.6
Pass/Fail	Legal and Financial	Refer to Section 3.8

### 4.4 Determining Short-listed Submitters

The City will total the scores for each responsive SOQ and prepare a ranked list of Submitters. The City anticipates short-listing at least two, but not more than five, of the most highly qualified Submitters that submit SOQs.

The City reserves the right, in its sole discretion, to cancel this RFQ, issue a new request for qualifications, reject any or all SOQs, seek or obtain data from any source that has the potential to improve the understanding and evaluation of the responses to this RFQ, seek and receive clarifications to an SOQ and waive any deficiencies, irregularities or technicalities in considering and evaluating the SOQs.

The City makes no guarantee that a Request for Proposals (RFP) will be issued for this Project. Submitters short-listed for this Project under this RFQ are not guaranteed to be short-listed on any future RFQ issued for this Project.

This RFQ does not commit the City to enter into a contract or proceed with the procurement of the Project. The City assumes no obligations, responsibilities, or liabilities, fiscal or otherwise, to reimburse all or part of the costs incurred by the parties responding to this RFQ. All such costs shall be borne solely by each Submitter. In addition, the City assumes no obligations, responsibilities or liabilities, fiscal or otherwise, to reimburse all or part of the costs incurred by the parties if the City elects to not issue an RFP for the Project.

### 4.5 Notification of Short-listing

Upon completion of the evaluation, scoring and short-listing process, the City will send the list of short-listed Submitters (if any) to all Submitters. The City will also publish the list on its website.



#### **4.6 Debriefing Meetings**

Once the City announces the short list (if any), the City may arrange debriefing meetings with Submitter organizations that were not shortlisted. The purpose of a debriefing meeting is for the City to provide informal and objective comments to a Submitter on the City's review of their SOQ, and provide feedback that may help Submitters improve their SOQ's for future procurements. A debriefing meeting also provides an informal setting to discuss this RFQ and the procurement process; however, the Submitter should not use the debriefing meeting as a forum in which to address issues raised in any Protest under Section 7. If a Submitter has filed a protest under Section 7, and the Submitter also requests a debriefing meeting, the debriefing meeting will be scheduled to occur after the City has issued a final agency decision regarding the merits of the Protest as provided in Section 7.

### **5.0 PROCEDURAL REQUIREMENTS FOR SOQ SUBMITTAL**

The following section describes requirements that all Submitters must satisfy in submitting SOQs. Failure of any Submitter to submit their SOQ as required in this RFQ may result in rejection of its SOQ.

#### **5.1 Due Date, Time and Location**

**All SOQs must be received by the date and time indicated in Section 2.3, and must be delivered by U.S. mail, hand, or overnight courier to the City Clerk.** Any SOQ that fails to meet the deadline or delivery requirement will be rejected without opening, consideration, or evaluation.

Judy Scherr  
City Clerk  
201 4<sup>th</sup> Street SE Room 135  
Rochester, MN 55904

#### **5.2 Format**

**The front cover of each SOQ must be labeled with "2<sup>nd</sup> Street SE Reconstruction Design-Build Project" and "Statement of Qualifications" and the date of submittal.**

#### **5.3 Quantities**

Each submitter must provide the City with 12 bound copies and one electronic copy of the SOQ. Each copy must be identified on its front cover, in the upper right-hand corner,

as “Copy \_ of 12.”

All binders must be packed together in one sealed package to to Delivery Location. The outside of the sealed package must be clearly identified, labeled and addressed as follows:

- Return address: Submitter’s name, contact person’s name, mailing address
- Date of Submittal
- Contents labeled as “2<sup>nd</sup> Street SE Reconstruction Design-Build Project” and “Statement of Qualifications”
- Recipient (City Clerk) as specified in Section 5.1.

## **6.0 PROCUREMENT PHASE 2**

This Section is provided for informational purposes only so that each Proposer has information that describes the second phase of the Project procurement process, including a summary of certain anticipated RFP requirements. The City reserves the right to make changes to the following, and the short-listed Proposers must only rely on the actual RFP when and if it is issued.

### **6.1 Request for Proposals**

The Proposers remaining on the short list following Phase 1 of the procurement process will be eligible to move to Phase 2 and receive an RFP. While the City may make the RFP available to the public for informational purposes, only short-listed submitters will be allowed to submit a response to the RFP. The individual SOQ scores will be used in conjunction with the final RFP evaluation criteria.

### **6.2 RFP Content**

#### **6.2.1 RFP Structure**

The RFP may be structured as follows:

- a) Instructions to Proposers
- b) Contract Documents
  - Book 1 (Contract Terms and Conditions)
  - Book 2 (Project Requirements)

- Book 3 (Standards)
  - A provision that the Contractor's Technical Proposal, Interview Statements, and Pre-Award Documentation become part of the final contract.
- c) Reference Information Documents (RID)

### **6.2.2 RFP Information**

The RFP will include the following information:

- a) Maximum time allowable for design and construction
- b) The City's cost estimate for the Project
- c) Requirements for a cost loaded, resource loaded Critical Path Method (CPM) schedule
- d) Requirements for submitting Alternative Technical Concepts (ATCs)
- e) A requirement that if the Proposer is a joint venture, each of the joint venture members will be, if awarded the design-build contract for the Project, jointly and severally liable for performance of the design-build contractor's obligations under the contract.

### **6.2.3 Warranties**

The RFP will require the design-build contractor to provide warranties for all elements of the Project for three years after Substantial Completion of the Project.

## **6.3 Pre-Proposal Meeting**

The City will offer each short-listed Proposer the opportunity to meet before the proposal due date to discuss the Project and the RFP process, as well as separate meetings to discuss any ATCs being developed. In any such meeting, the City will meet with only one Proposer at a time. Proposers are not required to accept the meeting offers.

## **6.4 Proposals Submitted in Response to the RFP**

Short-listed Proposers that choose to continue in the procurement process must submit a two-part proposal. One part is the technical proposal. The second part is the price

proposal. The RFP will specifically define formats and page limits for the proposal packaging and all proposal contents.

## **6.5 Proposal Evaluations**

The City and MnDOT have determined that award of the Project based on a “best-value” determination under 2009 Minn. L, ch.36, art. 3, § 29. provides the opportunity to obtain the most qualified contractor to deliver the Project.

## **6.6 Stipends**

The City will award a stipend of at least 0.2 percent of the City’s final estimate of Project construction and design costs to each short-listed, responsible Proposer that provides a responsive but unsuccessful proposal. See Section 2.2 for the City’s current cost estimate.

No stipends will be paid for submitting SOQs.

In consideration for paying the stipend, the City may use any ideas or information contained in the proposals in connection with any contract awarded for the Project or in connection with a subsequent procurement, without any obligation to pay any additional compensation to the unsuccessful short-listed Proposers.

The City will pay the stipend to each eligible Proposer within 90 days after the award of the contract or the decision not to award a contract. If an unsuccessful short-listed Proposer elects to waive the stipend, the City will not use ideas or information contained in that Proposer’s proposal. However, the Proposer’s proposal will be subject to Minnesota data practice laws.

## **7.0 Protest Procedures**

This Section sets forth the exclusive protest remedies available with respect to this RFQ. Each Submitter, by submitting its SOQ, expressly recognizes the limitation on its rights to protest contained herein. These provisions are included in this RFQ expressly in consideration for such waiver and agreement by the Submitters. Such waiver and agreement by each Submitter are also consideration to each other Submitter for making the same waiver and agreement.

If a Submitter disregards, disputes or does not follow the exclusive protest remedies set forth in this RFQ, it shall indemnify, defend, protect and hold harmless the City, its

officers, officials, employees, agents, representatives and consultants from and against all liabilities, expenses, costs (including attorneys' fees and costs), fees and damages incurred or suffered as a result. The submission of an SOQ by a Submitter shall be deemed the Submitter's irrevocable and unconditional agreement with such indemnification obligation.

#### **7.1 Protests Regarding Facially Apparent Deficiencies in RFQ/Phase I Procedures**

The Submitter may protest the terms of this RFQ prior to the time for submission of SOQs on the grounds that (a) a material provision in this RFQ is ambiguous, (b) any aspect of the procurement process described herein is contrary to legal requirements applicable to this procurement, or (c) this RFQ in whole or in part exceeds the authority of the City. Protests regarding this RFQ shall be filed only after the Submitter has informally discussed the nature and basis of the protest with the Rochester City Engineer in an effort to remove the grounds for protest.

Protests regarding this RFQ shall completely and succinctly state the grounds for protest and shall include all factual and legal documentation in sufficient detail to establish the merits of the protest. Evidentiary statements, if any, shall be submitted under penalty of perjury.

Protests regarding this RFQ shall be filed as soon as the basis for protest is known to the Submitter, but in any event it must be actually received no later than ten calendar days before the SOQ due date, provided that protests regarding an addendum to this RFQ shall be filed and actually received no later than five calendar days after the addendum to this RFQ is issued (or no later than the SOQ due date, if earlier).

Protests regarding this RFQ shall be filed in writing by hand delivery or courier to the City Clerk with a copy to Rochester City Engineer. The "Protest Official" is defined as:

Rochester City Attorney (or his designee)  
Rochester City Hall  
201 4<sup>th</sup> Street SE Room 247  
Rochester, MN 55904

The City will distribute copies of the protest to the other Submitters and may, but need not, request other Submitters to submit statements or arguments regarding the protest and may, in its sole discretion, discuss the protest with the protesting Submitter. If other Submitters are requested to submit statements or arguments, they may file a statement

in support of or in opposition to the protest within seven calendar days of the request. The City may also file a written statement with the Protest Official.

No hearing will be held on the protest. The Protest Official or his designee will review the facts and arguments presented in the written submissions and will decide the protest on the basis of the written submissions. The Protest Official will consider whether the City's position (a) is reasonable, and (b) is in compliance with the Minnesota Design-Build statute, 2009 Minn. L, ch.36, art. 3, § 29. The protest Official will recommend to the City Engineer whether any changes or addenda to the RFQ and procurement process are warranted. The Protest Official's recommendation will be in writing and will state the reasons for the decision. The City will furnish copies of the decision in writing to each Submitter. The City Engineer will issue the City's final decision within ten calendar days of receiving the recommendation and include written reasons for the decision (or incorporate those of the Protest Official). The decision shall be final and conclusive. If necessary to address the issues raised in the protest, the City will make appropriate revisions to this RFQ by issuing addenda. The City may extend the SOQ due date, if necessary, to address any protest issues.

The failure of a Submitter to raise a ground for a protest regarding this RFQ within the applicable period shall constitute an unconditional waiver of the right to protest the terms of this RFQ and shall preclude consideration of that ground in any protest of qualification of a Submitter unless such ground was not and could not have been known to the Submitter in time to protest prior to the final date for such protests.

## **7.2 Protests Regarding Responsiveness and Short-listing**

A Submitter may protest the results of the above-described evaluation and qualification process by filing a written notice of protest by hand delivery or courier to the Protest Official with a copy to the City Engineer. The protesting Submitter shall concurrently deliver a copy of its notice of protest to the other Submitters. The notice of protest shall specifically state the grounds of the protest.

Notice of protest of any decision to accept or disqualify an SOQ on responsiveness grounds must be filed within five calendar days after the earliest of notification of non-responsiveness, the scheduled date for interviews (if any) or the public announcement of short-listing. Notice of protest of the decision on short-listing must be filed within five calendar days after the public announcement of short-listing.

Within seven calendar days of the notice of protest, the protesting Submitter must file with the Protest Official, with a copy to the City Engineer, a detailed statement of the

grounds, legal authorities and facts, including all documents and evidentiary statements, in support of the protest. The protesting Submitter shall concurrently deliver a copy of the detailed statement to all other Submitters. Evidentiary statements, if any, shall be submitted under penalty of perjury.

Failure to file a notice of protest or a detailed statement within the applicable period shall constitute an unconditional waiver of the right to protest the evaluation or qualification process and decisions there under, other than any protest based on facts not reasonably ascertainable as of such date.

Other Submitters may file by hand delivery or courier to the Protest Official, with a copy to the Rochester City Engineer, a statement in support of or in opposition to the protest. Such statement must be filed within seven calendar days after the protesting Submitter files its detailed statement of protest. Rochester City Engineer will promptly forward copies of any such statements to the protesting Submitter.

Rochester City Engineer, at its option, file a written response to the Protest with the Protest Official, with a copy to the Submitter and any Submitters who have filed statements with the Protest Officials.

The Protest Official will consider whether the Committee's decision (a) is reasonable; and (b) is in compliance with the Minnesota Design-Build Pilot Program statute, 2009 Minn. L , ch.36, art. 3, § 29. The Protest Official will review the facts and arguments presented in the written submissions of the protesting firm, and the written submissions of Rochester City Engineer and other submitters, if any. The Protest Official will recommend, within 14 calendar days, that the Rochester City Engineer, acting through the Committee, either (1) affirm the Committee's original decision; or, depending on the nature of the protest, (2) reinstate a firm disqualified on responsiveness grounds, or add a firm to the short list. The Protest Official's recommendation will be in writing and include the reasons for the decision. The Rochester City Engineer will issue the City's final decision within ten calendar days of receiving the recommendation, and include written reasons for the decision (or incorporate those of the Protest Official). The Rochester City Engineer will deliver the written decision to the protesting Submitter and copies to the other Submitters.

If a notice of protest regarding responsiveness is filed prior to the interview process (if any), Rochester City Engineer may proceed with the interview process and may qualify Submitters before the protest is withdrawn or decided, unless the Protest Official or his designee determines, in his or her sole discretion, that it is in the public interest to postpone the qualification prior to a decision. Such a determination shall be in writing

and shall state the facts on which it is based.

If the Protest Official or his designee concludes that the Submitter filing the protest has established a basis for protest, the Protest Official or his designee will determine what remedial steps, if any, are necessary or appropriate to address the issues raised in the protest. Such steps may include, without limitation, withdrawing or revising the decisions, issuing a new request for qualifications or taking other appropriate actions.

### **7.3 Costs and Damages**

All costs of a protest shall be the responsibility of the protestor and undertaken at the protestor's expense. In addition, if the protest is denied, the Submitter filing the protest may be liable for City of Rochester's costs reasonably incurred in defending against the protest, including legal and consultant fees and costs, and any unavoidable damages sustained by the City as a consequence of the protest. The City shall not be liable for damages to the Submitter filing the protest or to any participant in the protest, on any basis, express or implied.



## **ATTACHMENTS AND EXHIBITS**

<b>ATTACHMENT A</b>	SOQ Cover Page & Checklist
<b>ATTACHMENT B</b>	SOQ Information Form
<b>ATTACHMENT C</b>	Risk Plan
<b>ATTACHMENT D</b>	Project and Technical Capability Plan
<b>ATTACHMENT E</b>	Resource Availability Documentation
<b>EXHIBIT 1</b>	Past Performance Information Guide

## ATTACHMENT A

### SOQ COVER PAGE & CHECKLIST

The Submitter must complete and submit this Attachment. This Attachment shall be the cover page for the Submitter's SOQ. DO NOT MODIFY THE FORMAT OF ANY OF THE REQUIRED ATTACHMENTS. Please staple all Attachments together (do not bind in any other way).

Project Name:	<b>2<sup>nd</sup> Street SE Reconstruction</b>
---------------	--

Vendor's Name:	
Point of Contact:	
Phone:	
Fax:	
Email:	

The following documents are required for this proposal (and must be stapled together):

- ☐ Attachment A      – Complete and staple as cover page in your proposal
- ☐ Attachment B      – Fill in all required information on Proposal Form
- ☐ Attachment C      – Complete and submit Risk Plan (2 pages max)
- ☐ Attachment D      – Complete and submit Project Capability Plan (2 pages max)
- ☐ Attachment E      – Complete and submit Resource Availability (1 page max)
- ☐ Legal & Financial    – Submit information as directed in Section 3.8
- ☐ Exhibit 1            – Compile a "Reference List" for each critical component
- ☐ Exhibit 1            – Compile and submit scanned surveys for each critical component

**Addenda Acknowledgement:** Vendor acknowledges receipt of the following addenda, and has incorporated the requirements of such addenda into the proposal. (*List All Addenda Issued For This Project*):

No.	Date
No.	Date

No.	Date
No.	Date

No.	Date
No.	Date

## ATTACHMENT B

### SOQ INFORMATION FORM

#### FIRMS

**Name of Submitter (Design-Builder):**

---

**Name of Engineering Firm:**

---

**Name of Lead Contractor:**

---

#### INDIVIDUALS

**Name of Project Manager:**

---

**Name of Project Engineer:**

---

**Name of Project Superintendent:**

---

**Name of Project Lead Design Engineer:**

---

---

Name of Company

---

Date

---

Printed Name of Firm Representative

---

Signature of Firm Representative

---

Email

---

Phone

---

Fax

# ATTACHMENT C

## Risk Plan

This template must be used. Please prioritize the risks (list the greatest risks first). You may add or delete additional rows to identify additional risks and solutions, but do not exceed the **two (2) page** limit.

**Risk 1 Description:** \_\_\_\_\_  
**Solution:** \_\_\_\_\_  
**Performance Metrics:** \_\_\_\_\_

**Risk 2 Description:** \_\_\_\_\_  
**Solution:** \_\_\_\_\_  
**Performance Metrics:** \_\_\_\_\_

**Risk 3 Description:** \_\_\_\_\_  
**Solution:** \_\_\_\_\_  
**Performance Metrics:** \_\_\_\_\_

**Risk 4 Description:** \_\_\_\_\_  
**Solution:** \_\_\_\_\_  
**Performance Metrics:** \_\_\_\_\_

**Risk 5 Description:** \_\_\_\_\_  
**Solution:** \_\_\_\_\_  
**Performance Metrics:** \_\_\_\_\_

## **ATTACHMENT D**

### **Project and Technical Capability Plan**

This template must be used. You may add or delete additional rows to identify additional capabilities, but do not exceed the **two (2) page** limit.

**Project Capability 1:** \_\_\_\_\_  
**Documented Performance:** \_\_\_\_\_

**Project Capability 2:** \_\_\_\_\_  
**Documented Performance:** \_\_\_\_\_

**Project Capability 3:** \_\_\_\_\_  
**Documented Performance:** \_\_\_\_\_

## **ATTACHMENT E**

### **Resource Availability Documentation**

This template must be used. This attachment must address Financial, Personnel, and Equipment Resources Available for project. Do not exceed the **one (1) page** limit.

#### **FINANCIAL RESOURCES**

#### **PERSONNEL RESOURCES**

#### **EQUIPMENT RESOURCES**

# EXHIBIT 1

## Past Performance Information Guide

### **SECTION 1 - OVERVIEW**

The City of Rochester will be analyzing past performance information on Submitters and their critical team components. To assist the client in identifying the highest past performance of a Submitter or individual, the following process will be used:

1. The Submitter will prepare a list of past clients that will be sent surveys (called a “Reference List”).
2. The Submitter will prepare survey forms and send them to their past clients.
3. The past Clients will send their surveys back to the Submitter.
4. The Submitter will compile all of the surveys and calculate their score(s).
5. The Submitter will package all of the information and submit the surveys with their submittal.
6. The City may double-check and verify ratings/scores.

NOTE: If the Submitter is submitting past performance information that was previously used for other projects, it is the responsibility of the Submitter to get the original survey forms and submit them to meet the requirement.

### **SECTION 2 – CREATING AND SUBMITTING A REFERENCE LIST**

1. All critical key components must create a list of past clients that will evaluate their past performance. This will be referred to as a “**Reference List**”.
2. The “Reference List” must be submitted on a MS Excel spreadsheet. A template is provided on the internet and can be downloaded at: [www.pbsrg.com](http://www.pbsrg.com) (click on “PIPS”, click on “City of Rochester”, click on “Reference List Template”)
3. The Submitter is responsible for selecting their team, selecting the list of past clients, and for the performance ratings of their critical key components.
4. The Submitter must include five (5) completed surveys for each firm and three (3) completed surveys for each individual. If the submitter does not have the required number of references, the submitter's past performance information rating may be given a lower rating.
5. The reference list should include the firms “best” projects. Surveys should be from different projects.
6. The Reference List must provide the following information on the TAB “Past Project Info”. If the submitter does not submit all the information required, credit may not be given for the reference:



CODE	A unique (different) number assigned to each project
FIRST NAME	First name of the person who will answer customer satisfaction

	questions.
LAST NAME	Last name of the person who will answer customer satisfaction questions.
PHONE NUMBER	Current phone number for the reference (including area code).
FAX NUMBER	Current fax number for the reference (including area code).
CLIENT NAME	Name of the company or institution that the work was performed for (i.e. Cactus School District, Rock Industries, City of Austin).
CITY	Location of project
STATE	Location of project
PROJECT NAME	Name of the project (Bird High School A-Wing, Warehouse B, etc.).
DATE COMPLETED [MM/DD/YYYY]	Date when the project was completed. (i.e. 5/31/1995)
COST OF PROJECT	Awarded cost of project (\$50,000)

7. The data in the PPI Database must be submitted in electronic format on a MS Excel spreadsheet file. ***The file must be emailed to Jake Smithwick at [Jake.Smithwick@asu.edu](mailto:Jake.Smithwick@asu.edu) and Tonya Klees at [tklees@rochestermn.gov](mailto:tklees@rochestermn.gov) by 11:00 am Minnesota time on October 11, 2011.*** The data must be complete and accurate.
8. The Submitter is responsible for verifying that their (and their key components) information is accurate prior to submission.
9. The reference list must contain different projects. The Submitter cannot have multiple people evaluating the same job. However, one person may evaluate several different jobs.
10. The past projects (on the reference list file) do not have to be similar to the type of project being bid.
11. The past projects must be completed past projects (no on-going or substantially complete projects).
12. All key components must submit their "Reference List" in separate excel files (only applicable if there are more than one critical key component identified in Part 3 of this section).
13. Please save the file as the name of the company (or individual) followed by "Ref List". For example, if the Submitter are submitting a reference list for "ABC Construction", the Submitter should save the file as "ABC Construction Ref List".



### **SECTION 3 – PREPARING THE SURVEYS**

After a “Reference List” is completed, the Submitter will be required to:

- a. Prepare a survey questionnaire for each of their past clients (on the reference list)
- b. Send the survey questionnaires to their past clients
- c. Receive the survey questionnaires from their past clients

The following steps will assist the Submitter in completing the aforementioned tasks.

1. Each key component is responsible for sending out a survey questionnaire to each of their past clients. The survey questionnaire is provided in this document.
2. Each key component should enter the required information on the survey questionnaire (Survey ID, past clients contact information, project information, and name of the firm and/or individual being surveyed). The information must match the data submitted in the “Reference List”.
3. The Submitter should also modify the return information at the bottom of the survey with a contact person and an accurate fax number. Remember, the survey will be sent from the Submitter past client to the Submitter (so the Submitter must enter a valid fax number).

Again, thank you for your time and effort in assisting the University of Minnesota in this important endeavor. **Please fax the completed survey, no later than January 16, 2008, to:**

**Joe Smith (ABC Construction) at Fax # (555) 555-5656**

4. All returned surveys MUST be evaluated and signed by the past client. If a survey is not signed, it will NOT be counted.

PHIL MCGILL

Printed Name (of Evaluator)

*Phil McGill*

Signature (of Evaluator)

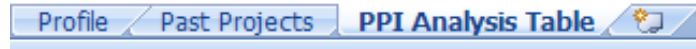
Again, thank you for your time and effort in assisting the University of Minnesota in this important endeavor. **Please fax the completed survey, no later than January 16, 2008, to:**

**Joe Smith (ABC Construction) at Fax # (555) 555-5656**

5. Each key component is responsible for making sure that their past clients receive the survey, complete the survey, and return the survey back to the Submitter.
6. The past client/owner must evaluate and complete the survey.
7. *Recommendation:* To save work in the future, the site superintendent and project manager (that worked on that particular past project) should be listed on every survey questionnaire that they participated on. Do not list more than one individual for the same position (i.e. If Joe Smith was a PM on the project, the Submitter cannot list another individual as a PM on that same project).

## **SECTION 4 – GENERATING THE SUBMITTER PAST PERFORMANCE SCORE**

1. Once a survey has been returned from a past client, the Submitter will input the survey scores into the appropriate columns in the Reference list on the “PPI analysis Table” tab. Each Survey should have a column on the PPI Analysis Table containing the code and the scores from the surveys.



2. On the PPI Analysis Table - Question 9 refers to the number of projects surveyed. The Submitter will put a “1” in the box if the project is a unique project (meaning that the project has never been surveyed before), “0” should be put in box when the project is not unique to prior surveys.
3. On the PPI Analysis Table - Question 10 refers to the number of clients surveyed. The Submitter should put a “1” in the box if the individual that completed the survey is unique (meaning that the individual has not completed and returned any other survey for that critical team component), “0” should be put in box when the client is not unique to prior surveys.
4. Note: A separate MS Excel file must be submitted for each critical team component.

## **SECTION 5 – SUBMITTING THE SUBMITTER INFORMATION**

5. All of the returned surveys should be packaged together and submitted with the Submitter proposal.
6. The Submitter should also include an electronic copy of all necessary Reference Lists (along with all of the surveys scores that the Submitter entered).
7. The City may contact the reference for additional information or to clarify survey data. If the reference cannot be contacted, the survey will be deleted and no credit given for that reference.

# Survey Questionnaire – City of Rochester

## (Construction Services)

Survey ID \_\_\_\_\_

To: \_\_\_\_\_  
(Name of person completing survey)

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Subject: Past Performance Survey of: \_\_\_\_\_  
(Name of Company)

\_\_\_\_\_  
(Name of Individuals)

The City of Rochester is implementing a process that collects past performance information on vendors and their key personnel. The vendor/individual listed above has listed you as a client for which they have previously performed work on. The City greatly appreciates your time in completing this survey. Rate each of the criteria on a scale of 1 to 10, with 10 representing that you were very satisfied and 1 representing that you were very unsatisfied. Please rate each of the criteria to the best of your knowledge. If you do not have sufficient knowledge in a particular area, please leave it blank.

Client Name: \_\_\_\_\_ Date Completed \_\_\_\_\_

Project Name: \_\_\_\_\_

NO	CRITERIA	UNIT	
1	Ability to manage the project cost (minimize change orders)	(1-10)	
2	Ability to maintain project schedule (complete on-time or early)	(1-10)	
3	Quality of workmanship	(1-10)	
4	Ability to manage & professionalism (prompt payment to suppliers and subcontractors)	(1-10)	
5	Close out process (no punch list upon turnover, warranties, as-builts, operating manuals, tax clearance, etc)	(1-10)	
6	Ability to communicate and document (risk management)	(1-10)	
7	Ability to follow users rules, regulations, and requirements (housekeeping, safety, etc...)	(1-10)	
8	Overall customer satisfaction	(1-10)	

\_\_\_\_\_  
Printed Name (of Evaluator)

\_\_\_\_\_  
Signature (of Evaluator)

Thank you for your time and effort in assisting City of Rochester in this important endeavor.

**Please fax the completed survey to: xxx-xxx-xxxx**

## **EXHIBIT A**

### **Conflict Management Rochester 2<sup>nd</sup> Street SE Reconstruction Design-Build Project**

#### **BACKGROUND**

The purpose of this memo is to clarify and state the City of Rochester's ("City") position on potential conflicts of interest which may arise when consultants or contractors perform work for the City on the 2<sup>nd</sup> Street SE Reconstruction Design-Build Project ("Project").

#### **DISCUSSION**

State and federal laws and regulations govern organizational conflicts of interest in contracts related to design-build projects undertaken by the State of Minnesota.

Minnesota Statutes § 16C.04 (subd.3) applies to all state procurements, and requires that reasonable efforts be made to avoid, mitigate, neutralize organizational conflicts of interest. Minnesota Statutes § 16C.02 (subd. 10a) states “Organizational conflict of interest means that because of existing or planned activities or because of relationships with other persons: (1) the vendor is unable or potentially unable to render impartial assistance or advice to the state; (2) the vendor’s objectivity in performing the contract work is or might be otherwise impaired; or (3) the vendor has an unfair advantage.”

In addition, the Minnesota Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design (AELSLAGID) has promulgated a conflict of interest rule applicable to professionals licensed by the board (see Minnesota Rules part 1805.0300).

A Federal Highway Administration (FHWA) regulation addresses organizational conflicts of interest related to design-build projects financed in whole or in part with federal funds (see 23 CFR § 636.116, hereinafter the “Regulation”). The Regulation supplements, and does not replace, applicable Minnesota laws and rules.

In general, the Regulation specifies that state statutes or policies concerning organizational conflict of interest should be specified or referenced in the design-build RFQ or RFP documents as well as any contract for engineering services, inspections, or technical support.

The Regulation also states that consultants and/or sub-consultants who assist the owner in the

preparation of RFP documents will not be allowed to participate as an offeror or join a team submitting a proposal in response to the RFP. However, a contracting agency may determine that there is not an organizational conflict of interest for a consultant or sub-consultant where:

- i. The role of the consultant or sub-consultant was limited to providing preliminary design, reports, or similar “low-level” documents that will be incorporated into the RFP, and did not include assistance in the development of instructions to offerors or evaluation criteria, or
- ii. All documents and reports delivered to the agency by the consultants or sub-consultants are made available to all offerors.

## **APPROACH**

Based upon the guidance of Minnesota State law and the Regulation, the following conflict of interest provisions will apply to this Project:

1. For the purpose of this Project “Organizational conflict of interest” and/or “conflict of interest” means that because of existing or planned activities or because of relationships with other persons: (1) the Consultant is unable or potentially unable to render impartial assistance or advice to the City; (2) the Consultant's objectivity in performing the contract work is or might be otherwise impaired; or (3) the Consultant has an unfair advantage.
2. Consultants will not be allowed to participate as an offer or to join in a design-build team if the participation will result in an organizational conflict of interest and/or conflict of interest.
3. In addition, Consultants will NOT be allowed to participate as an offeror or to join a design-build team if the Consultant:
  - a. The Consultant has a contract with the City which specifically excludes them from participating as an offeror or joining a design-build team.
  - b. The Consultant is under contract with the City or other stakeholders to perform oversight on the Project after letting.
4. For Consultants and sub-consultants who performed work for the City or other key stakeholders in relation to the Project, and wish to participate as an offeror or join a design-build team the Consultant or sub-consultant must:

- a. Conform to federal and state conflict of interest rules and regulations.
- b. Disclose in the response documents to a design-build Request for Qualification (RFQ) and RFP all the work performed in relation to the Project.
- c. Provides ALL records of work performed to the City so that all information can be made available to all potential design-build teams.
- d. The Consultant's contract with the City (or other key stakeholders) to perform the services related to the design-build project has expired or has been terminated.

Upon review of the information provided above, the City will determine, in its sole discretion, if the Consultant has obtained an unfair competitive advantage.

- 5. For other potential conflict of interest cases not mentioned above, (e.g. employees changing companies, merger/acquisitions of firms), Consultants shall disclose and address any conflicts of interest or potential conflicts of interest when participating as an offeror or joining a design-build team. The City will then determine if a conflict of interest exists.

General Notes – Unless otherwise stated, "Consultant" shall mean prime Consultants and Sub-Consultants performing services for the prime consultant.